

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

PHILIP HECKMAN,

Plaintiff,

v.

**9:08-CV-144
(FJS/RFT)**

**TERRI MAXAMILLION, Assistant
Supervisor; and DONALD SAYER, CNY
Psychiatric Center,**

Defendants.

APPEARANCES

**PHILLIP HECKMAN
145004404**

CNY Psychiatric Center
P.O. Box 300
Marcy, New York 13403-0300
Plaintiff *pro se*

SCULLIN, Senior Judge

ORDER

On February 7, 2008, Plaintiff filed his civil rights complaint pursuant to 42 U.S.C. § 1983 in this action. In that complaint, Plaintiff asserted, generally, that the CNY Psychiatric Center, where he was currently housed, had no law library in violation of his First, Sixth, and Fourteenth Amendment rights.

On April 2, 2008, Magistrate Judge Treece issued a Report Recommendation and Order, in which he concluded that, because "Plaintiff ha[d] made no allegation regarding an actual injury he suffered due to the inadequate (or non-existent) law library at the psychiatric center[,] . . . he ha[d] failed to state a claim upon which relief could be granted and dismissal would be

appropriate." *See* April 2, 2008 Report Recommendation and Order at 3. However, due to Plaintiff's *pro se* status, Magistrate Judge Treece recommended that this Court provide Plaintiff with an opportunity to amend his complaint to cure its deficiencies. *See id.* at 3-4.

On April 9, 2008, Plaintiff filed objections to Magistrate Judge Treece's findings and recommendations. *See* Dkt. No. 5. Although not entirely clear, it appears that Plaintiff objects to Magistrate Judge Treece's characterization of him as a prisoner. *See id.* at ¶ 1. Rather, Plaintiff submits that he is a "civil commitee [sic] pursuant to NY MHL Artical [sic] 10 . . . [and] therefor, [sic] not subject to Prison Litagation [sic] Reform Act." *See id.* Furthermore, Plaintiff asserts that, if necessary, this Court should dismiss this action, without prejudice, because he is developmentally disabled and is incapable of continuing this action. *See id.* at ¶¶ 3-4.

After reviewing Magistrate Judge Treece's Report Recommendation and Order and Plaintiff's objections thereto, the Court hereby

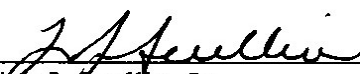
ORDERS that Magistrate Judge Treece's April 2, 2008 Report Recommendation and Order is **ADOPTED IN ITS ENTIRETY**; and the Court further

ORDERS that, because Plaintiff acknowledges that he cannot continue with this action, Plaintiff's complaint is **DISMISSED WITHOUT PREJUDICE**; and the Court further

ORDERS that the Clerk of the Court shall enter judgment and close this case.

IT IS SO ORDERED.

Dated: March 28, 2009
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge